

REMARKS

Claims 22-24 stand rejected under 35 USC 112, second paragraph, as being indefinite. The Examiner has agreed with applicants that functional language does not in itself render a claim indefinite. The Examiner, however, asserts that “the present claim language merely sets forth physical characteristics desired in the yarn rather than the specific composition or structure that produces said physical characteristics.” This is incorrect. Claim 22 sets forth that it is an aliphatic polyester multifilament crimped yarn that has the claimed characteristics. The recitation of an aliphatic polyester multifilament crimped yarn includes both a description of the composition and the structure that produces these characteristics. Accordingly, this rejection should be withdrawn.

Claims 22-24 stand rejected under 35 USC 102(a) as being anticipated by JP 2002-180340 (hereinafter JP ‘340). The Examiner refused to remove this reference as prior art since, according to the Examiner, the “attorney’s notation . . . is insufficient to establish that the name recited in the Japanese reference is in error.” Attached is the declaration of Takehiko Miyoshi. This declaration states that Mr. Miyoshi is an inventor listed on both this application and JP ‘340. This application also states that the name on the English language Abstract of JP ‘340 is in error.

Since JP ‘340 and the instant application were invented by the same inventive entity, JP ‘340 is not an invention “by others” under 35 USC 102(a). Further, the filing date of the Japanese patent application is evidence of a date of the invention that is earlier than the date that this Japanese patent application published. Accordingly, JP ‘340 is no longer a valid prior art reference under 35 USC 102(a), and this rejection should be withdrawn.

Claim 22 stands rejected under 35 USC 102(a) as anticipated by or, in the alternative, under 35 USC 103(a) as obvious over JP 2002-10572 issued to Okawa (hereinafter Okawa). Claims 23 and 24 stand rejected under 35 USC 103(a) as being unpatentable over Okawa. These rejections are respectfully traversed.

Attached is a declaration under 37 CFR 1.131 of co-inventor Kazuya Matsumura. This declaration establishes a data of invention for the claimed invention prior to April 10, 2002, the publication date of Okawa. Please note that the dates of these reports have been redacted, however, Mr. Matsumura declares that all of these dates are prior to April 10, 2002. This declaration removes the Okawa reference as a prior art reference. Accordingly, these rejections of claims 22-24 should be withdrawn.

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue. If it is determined that a telephone conference would expedite the prosecution of this application, the Examiner is invited to telephone the undersigned at the number given below.

In the event the U.S. Patent and Trademark Office determines that an extension and/or other relief is required, applicants petition for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to **Deposit Account No. 03-1952** referencing docket no. **360842009710**.

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Respectfully submitted

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Attachments